

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

The Philadelphia Protestant Home, Inc. and Professional Nurses and Hospital Personnel, Division of United Paperworkers Union, Local 375, AFL-CIO. Case 4-CA-23434

March 14, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Pursuant to a charge filed by the Union on January 24, 1995, the General Counsel of the National Labor Relations Board issued a complaint on January 27, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-18450. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On February 17, 1995, the General Counsel filed a Motion for Summary Judgment. On February 21, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On March 7, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its contentions in the representation proceeding that the Regional Director improperly overruled its objection to the election and failed to hold a hearing thereon.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

316 NLRB No. 126

Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, has been engaged in the operation of a continuing care retirement community at its facility located at 6500 Tabor Road, Philadelphia, Pennsylvania. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, received gross revenues in excess of \$500,000, and purchased and received goods and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 7, 1994, the Union was certified on January 4, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service and maintenance employees, including the printer, employed by Respondent at its Philadelphia, Pennsylvania facility; excluding all other employees, drivers, clerical employees, confidential employees, managerial employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About January 17, 1995, the Union requested the Respondent to recognize and bargain and, since about January 20, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 20, 1995, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, the Philadelphia Protestant Home, Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Professional Nurses and Hospital Personnel, Division of United Paperworkers Union, Local 375, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time service and maintenance employees, including the printer, employed by Respondent at its Philadelphia, Pennsylvania facility; excluding all other employees, drivers, clerical employees, confidential employees, managerial employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."¹

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 14, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to recognize and bargain with Professional Nurses and Hospital Personnel, Division of United Paperworkers Union, Local 375, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time service and maintenance employees, including the printer, employed by us at our Philadelphia, Pennsylvania facility; excluding all other employees, drivers, clerical employees, confidential employees, manage-

rial employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

THE PHILADELPHIA PROTESTANT HOME, INC.